expired tenancies under the Act allowed them to cultivate their 'padi land' with padi. After the expiry of their tenancies agreements, there being no renewal thereof, they ceased to have a right to cultivate their padi land with padi. And it seems to me clear that the plaintiff has a clear right now subsisting to exclude the defendants from entering, trespassing upon and cultivating the padi land which previously were alloted to the defendants under the tenancy agreements.

In *Manchester Corp* v *Connolly*,[4] (see also *Lee Ying Piew & Ors* v *MP Tan Electrical & Credit Sdn Bhd*[5]), it was held that an injunction may be granted even if it would give the plaintiff the whole remedy before the action is tried where plainly there is no defence to the action and the only object in raising the defence is to cause delay. Here in the instant case there is plainly no defence in so far as the areas of land alloted to the defendants in their now expired tenancy agreements for padi cultivation are concerned and it seems to me the object in raising the defence is to obtain compensation from the plaintiff for vacating the padi land for the first, fourth, fifth and sixth defendants have readily admitted in their affidavits that there were steps taken to settle the matter relating to the possession of their land and that no settlement had been reached regarding their 'rights of cultivating the said land'.

As was previously stated, the court was unaware that the four defendants who applied to have the injunctions set aside had homes located in the land. It is not clear whether their homes stand outside the area alloted to them for padi cultivation or within. If they stand within the previously alloted areas the homes were not caught within the tenancy agreements done under the provisions of the Act. Section 2 defines a tenancy agreement as 'any agreement whereby a landlord agrees to let and a tenant agrees to take any *padi land* for the purpose of cultivating padi and includes any agreement whereby any person agrees to work on any padi land for payment of a share of the crop or any consideration in lieu thereof' (emphasis mine).

The expression 'padi land' mentioned in the definition in s 2 is defined as 'land or any portion of land the purpose of which is for the cultivation of padi or on which padi is cultivated *excluding any area occupied by a building site or other land*' (emphasis mine). And 'tenant' under s 2 of the Act 'means the tenant of any padi land comprised in a tenancy agreement'.

From the foregoing, the 'tenancy agreements' of the six defendants, 'tenants' under the Act, could only have been in respect of 'padi land' and could not have included any area occupied by their homes.

There is no material upon which the court can rely to determine what legal or equitable rights exist in respect of the areas where the homes of the first, fourth, fifth and sixth defendants stand. With respect it was not appreciated by all parties to the action that the areas were not, by operation of law, included in the land comprised in the expired tenancy agreements and so the matter was not addressed.

Thus the injunction that the court can grant and does grant is in respect of the 'padi land' areas which were the subject matter of the six expired tenancy agreements and not in respect of the areas on which stand the homes of the defendants.

The matter of the 'homes' in the land should have been disclosed when the plaintiff first applied for an injunction. The first, fourth, fifth and sixth defendants were entitled to have access to their homes and the plaintiff shall pay them damages which shall be assessed by the senior assistant registrar on a date to be fixed.

There shall be no order as to costs.

Order accordingly.

Solicitors: *Hoe & Ahmad Zaki; George John & Co.*

Reported by *Yap Shao Sin*

National Union of Employees in Companies Manufacturing Rubber Products v Director General for Industrial Relations & Anor

HIGH COURT (PENANG) — ORIGINATING SUMMONS NO 24-820-89
WAN ADNAN J
3 APRIL 1990

Labour Law — Trade unions — Recognition under Industrial Relations Act 1967 — Whether claim resolved — Industrial Relations Act 1967, ss 9 & 12

Statutory Interpretation — Relevance of marginal note — Ambiguity of statute — Reference to Bill

Words and Phrases — 'Resolved' — Industrial Relations Act 1967, s 12

The plaintiffs served a claim for recognition on the second defendants on 1 April 1988. The second defendants referred the matter to the first defendant. The plaintiffs then reported the matter to the first defendant who, pursuant to s 9 of the Industrial Relations Act 1967 ('the Act'), started to make inquiries. On 18 May 1989 the plaintiffs withdrew their claim for recognition. Then on 5 June 1989 the plaintiffs served a new claim for recognition on the second defendants with a copy to the first defendant. They were told that by virtue of s 12 of the Act they could not submit another claim until six months after 18 May 1989. The plaintiffs applied for a declaration, inter alia, that the rejection was incorrect.

Held, dismissing the plaintiffs' application:

(1) The function of the Director General for Industrial Relations ('the Director') is to make inquiries for recognition between trade union and employer. Where the Director is unable to resolve the matter he must notify the minister.

(2) The Director is not supposed to make a decision, and cannot accord recognition. That power is reserved to the employer or the minister.

(3) 'Resolve' in the Act means 'to become void, to lapse'. A matter becomes resolved when the obligation of the Director to resolve is brought to an end.

(4) In this case, the trade union withdrew its claim after the Director had taken steps and made inquiries with a view to trying to resolve the said claim. The withdrawal had the effect of putting an end to the Director's obligation to resolve the claim and the said claim was therefore considered resolved. Accordingly, s 12 of the Act applied and the rejection of the plaintiffs' claim was correct.

[*Editorial Note*: The plaintiffs have appealed to the Supreme Court vide Civil Appeal No 01-22-90.]

Cases referred to

1 *Stephens* v *Cuckfield Rural District Council* [1960] 2 All ER 716 (folld)
2 *Herron* v *Rathmines and Rathgar Improvement Commissioners* [1892] AC 498 (folld)

Legislation referred to

Industrial Relations Act 1967 ss 9, 12

N Shanmugam for the plaintiffs.
Soo Ai Lin (Senior Federal Counsel) for the first defendant.
S Kulasegaran for the second defendants.

Cur Adv Vult

Wan Adnan J: The plaintiffs' application is for:

(a) a declaration that the first defendant's rejection by their letter dated 12 June 1989 of the plaintiffs' claim for recognition under s 9 of the Industrial Relations Act 1967 in respect of the workmen employed by the second defendants was wrong and incorrect and based on a misinterpretation of s 12 of the Industrial Relations Act 1967;
(b) a declaration that the second defendants' refusal to accord recognition by their letter dated 9 June 1989 on the ground that s 12 of the Industrial Relations Act 1967 applies was also wrong and incorrect and based on a misinterpretation of the said section;
(c) such further or other consequential orders or directions as may be appropriate and proper;
(d) costs.

By letter dated 1 April 1988, the plaintiffs served a claim for recognition on the second defendants under s 9(2) of the Industrial Relations Act 1967 ('the Act'). The second defendants referred the matter to the first defendant for clarification. Subsequently the plaintiffs, pursuant to s 9(4) of the Act, reported the matter to the first defendant who then pursuant to s 9(4A) started to make enquiries to resolve the matter. Then by letter dated 18 May 1989, the plaintiffs withdrew their claim for recognition.

On 5 June 1989, the plaintiffs served a new claim for recognition on the second defendants with a copy to the first defendant. They were told their claim could not be entertained by reason of s 12 of the Act which provides as follows:

> 12 Trade unions not accorded recognition
>
> Where a claim for recognition under section 9(2) is revolved under section 9(4A), or where a decision thereon has been made by the Minister under section 9(5), resulting in the trade union of workmen concerned not being accorded recognition, such trade union shall not make any further claim for recognition until six months have elapsed from the date of such resolution or decision.

Hence this application.

The question is simply whether the plaintiffs' claim for recognition dated 1 April 1988 has been resolved under s 9(4A). It is the contention of counsel for the plaintiffs that the claim had not been resolved by the first defendant under s 9(4A). The withdrawal of the claim is not tantamount to the claim being resolved.

First, what is the function of the Director General when a claim for recognition is made? Under s 9(2), a trade union of workmen may serve on an employer a claim for recognition. Under s 9(3), the employer has 21 days after the service of the claim within which it must either

(a) accord recognition;
(b) refuse to accord recognition; or
(c) apply to the Director General to ascertain whether the workmen in respect of whom recognition is being sought are members of the trade union of workmen concerned.

If the employer does not accord recognition or if it fails to comply with sub-s (3), the trade union of workmen may report the matter in writing to the Director General who then under sub-s (4A) 'may take such steps or make such enquiries as he may consider necessary or expedient to resolve the matter'. Towards resolving the matter, the Director General is given the powers provided in sub-s (4B). Where the matter is not resolved under sub-s (4A), the Director General must notify the minister who then pursuant to sub-s (5) shall give his decision on the matter.

The obligation of the Director General to resolve the matter arises only upon receipt by him of either an application under sub-s (3)(c) or a report under sub-s (4). Under sub-s (4A), the Director General then takes the necessary steps and makes necessary inquiries to resolve the matter. How does he 'resolve' the matter when sub-s (4C) provides 'Where the matter is not resolved under subsection (4A) the Director General shall notify the Minister' and sub-s (5) provides for the minister to make the decision? In my view, the Director General is not supposed to make a decision on the matter. He cannot decide whether or not to accord recognition. The power to accord recognition is only given to the employer under

s 9(3)(a) or the minister under s 9(5). The most the Director General can do to resolve the matter under sub-s (4A) is (after exercising his powers under sub-s (4B)) to advise the employer to accord recognition. If the advice is accepted and recognition is accorded the matter is resolved under sub-s (4A). Otherwise the matter is not resolved and has to be referred to the minister for his decision.

Now I come back to this application. The Act does not define the word 'resolve'. *Webster's New World Dictionary* gives the meaning as 'to make a decision about' or 'to come to a decision' while *Chambers' Twentieth Century Dictionary* gives the meaning as 'to solve, to dissipate, to free from doubt or difficulty' and the *Universal Dictionary of English Language* 'to become void, to lapse'. In the context of s 9 of the Act, I prefer to take 'to become void, to lapse' as the meaning of the word 'resolve' in s 9(4A) of the Act. A matter becomes resolved when the obligation of the Director General to resolve has been brought to an end.

As I said earlier, the obligation of the Director General to resolve arises only upon receipt by him of either an application under sub-s (3)(c) or a report under sub-s (4). Therefore if a trade union withdraws its claim for recognition before the matter has become a matter for the Director General to resolve, the matter cannot be said to have been resolved by the Director General under sub-s (4A) and therefore s 12 of the Act does not apply. But if the union withdraws its application for recognition after the Director General has started to take steps and make inquiries pursuant to sub-s (4A), the matter of the application for recognition must be considered to have been resolved and accordingly s 12 of the Act applies. In this case, the trade union withdrew its application after the Director General had taken steps and made inquiries towards resolving the application. Section 12 of the Act therefore applied.

Counsel for the plaintiffs also contends that for s 12 of the Act to apply there must have been a decision not to accord recognition. He relies first, on the marginal note to s 12 which says 'Trade Unions not accorded recognition' and secondly, to the explanatory statement to the Bill of Parliament to amend s 12 of the Industrial Relations Act 1967 which says 'Clause 4 seeks to amend s 12 of the Act to extend the waiting period from three months to six months before a trade union would be allowed to submit a fresh claim for recognition after an *earlier claim for recognition has been rejected.*' (Emphasis is added.)

I was referred to the case of *Stephens* v *Cuckfield Rural District Council*[1] where it was said:

> While the marginal note to a section cannot control the language used in the section, it is at least permissible to approach a consideration of its general purpose and the mischief at which it is aimed with the note in mind.

Reading s 12 of the Act, I find there is no ambiguity at all. There is no need to use the marginal note as an aid to the construction of the section. The section is very clear. The section applies not only to a claim where recognition is not accorded but also to a claim which has been resolved under s 9(4A). Similarly with regard to the explanatory statement. There is no ambiguity in the section. 'Even when words in a statute are ambiguous so that they may be construed in more than one sense regard may not be had to the Bill by which it was introduced.' (*Herron* v *Rathmines and Rathgar Improvement Commissioners*[2] at p 501.)

The application is dismissed with costs.

Application dismissed.

Solicitors: *Shan & Gooi; Ranjit, Thomas & Kura.*

Reported by *Mathavan Devadas*

Lembaga Kemajuan Tanah Persekutuan v Muda bin Jusoh & Anor

HIGH COURT (SEREMBAN) — CIVIL APPEAL NOS 12-19 AND 12-20 OF 1988
MUSTAPHA HUSSAIN J
26 MARCH 1990

Labour Law — Workmen's compensation — Appeal from award of arbitrator — Whether claim time-barred — Who is principal — Workmen's Compensation Act 1952, ss 12(1) & 19(1)

Words and Phrases — 'Trade' — Workmen's Compensation Act 1952, s 19(1)

Words and Phrases — 'Business' — Workmen's Compensation Act 1952, s 19(1)

Both respondents were injured while they were employed by contractors engaged by the appellant. They applied for compensation under the Workmen's Compensation Act 1952 ('the Act'). The arbitrator found that the appellant were the respondents' principal and ordered compensation to be paid. The appellant appealed alleging that the claims were time-barred and that their contractors were the rightful principals.

Held, dismissing the appeals:

(1) Both claims were time-barred as they were not brought within six months of the accident. However this point was not raised in the arbitration proceedings. As such, this point of law could not be considered on appeal.

(2) It was the business of the appellant to fell trees and clear areas for resettlement. The appellant employed contractors to do this work and the contractors in turn engaged the respondents.

(3) The work that was being carried out by the respondents, even though they were employed directly by contractors, was in the course of and for the purpose of the appellant's business. It